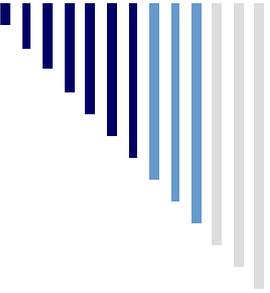


National Society of Tax Professionals

ETHICS: “OUR JOINT RESPONSIBILITY”

Presented by:

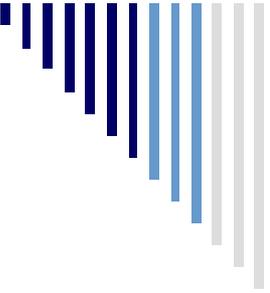
Tom Cooke
Executive Director, NSTP
@2003



ETHICS: PART II

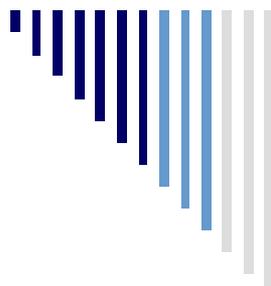
The Journey Continues

- CIRCULAR 230 ANALYSIS, continued
- STATEMENTS ON STANDARDS FOR TAX SERVICES & TAX CODE PROVISIONS
 - THE STANDARDS ENFORCED AS PART OF THE AICPA CODE OF PROFESSIONAL CONDUCT
 - THE AICPA CODE OF PROFESSIONAL CONDUCT CONSISTS OF TWO INTEGRAL SECTIONS:
 - PRINCIPLES
 - RULES



STANDARDS FOR TAX RETURN POSITIONS

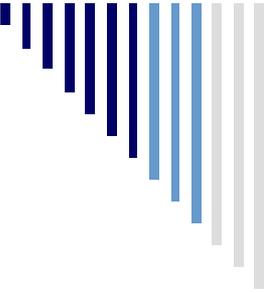
- Section 10.34 of Circular 230 is one of the most important sections in that it establishes the standards for “signing a tax return,” the standards for advising clients on taking positions on a tax return and the right to rely on information furnished by clients.
- Section 10.34 requires special attention and analysis.



“REALISTIC POSSIBILITY” STANDARD

- A position is considered to have a “**realistic possibility**” of being sustained on its merits if a reasonable and well informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a **1 in 3**, or greater, likelihood of being sustained on its merits.

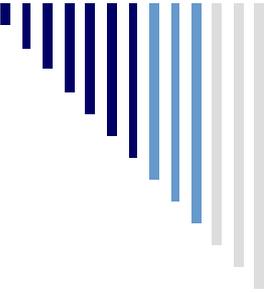
Section 10.34(d)(1)



“FRIVOLOUS”

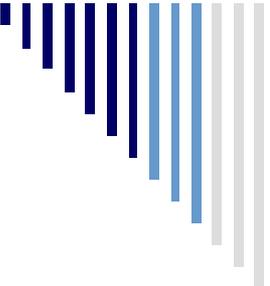
- A position is “frivolous” if it is patently improper.

Section 10.34(d)(2)



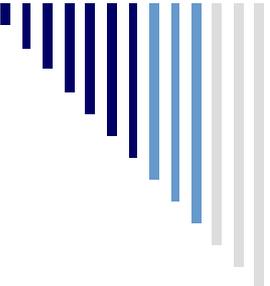
10.34(a) Signing a Return

- A practitioner may NOT sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a **realistic possibility of being sustained** on its merits (the realistic possibility standard) **UNLESS** the position is not frivolous **AND** is adequately disclosed to the IRS.



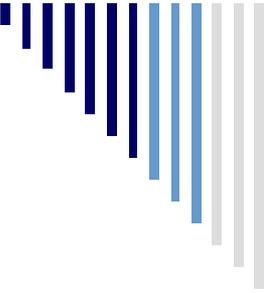
10.34(a) POSITIONS ON A TAX RETURN

- A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, **UNLESS**
 1. The practitioner determines that the position satisfies the **realistic possibility** standard; OR
 2. The position is not **frivolous** and the practitioner advises the client of any opportunity to avoid the accuracy-related penalty in Section 6662 of the Code by adequately **disclosing** the position and of the requirements for adequate disclosure.



10.34(b) ADVISING THE CLIENT ON PENALTIES

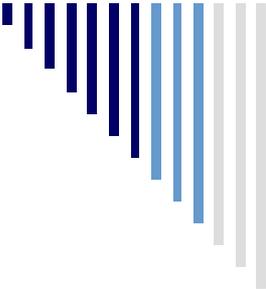
- A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, **MUST** inform the client of the penalties **reasonably** likely to apply to the client with respect to the position advised, prepared or reported. The practitioner also must inform the client of any opportunity to avoid such penalty by **disclosure**, if relevant, and of the requirements for **adequate disclosure**.



10.34(c)

RELYING ON INFORMATION

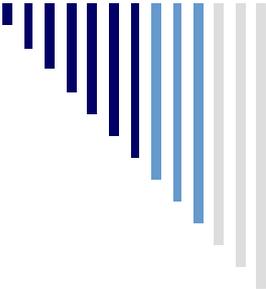
- A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, generally may **RELY in good faith** without verification upon information furnished by the client.
- A practitioner may not, however, ignore the implications of information furnished to, or actually known, by the practitioner, and must make reasonable inquires if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.



Remaining Sections of Circular 230

10.50	Sanctions
10.51	Incompetence/Disreputable Conduct*
10.52	Violation of Regulations
10.53	Receipt of Information Concerning the Practitioner
10.60	Institution of Proceeding
10.61	Conferences
10.62	Contents of Complaint
10.63	Service of Complaint
10.64	Answer
10.65	Supplemental charges
10.66	Rely to Answer
10.67	Proof
10.68	Motions and Requests

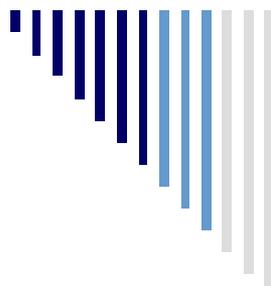
* This section includes a number (12) of examples.



CIRCULAR 230

Continued

10.69	Representation
10.70	Administrative Law Judge
10.71	Hearings
10.72	Evidence
10.73	Depositions
10.74	Transcript
10.75	Proposed findings and conclusions
10.76	Decision of Administrative Law Judge
10.77	Appeal of Decision
10.78	Decision on Appeal
10.79	Effect of Disbarment, Suspension, or Censure
10.80	Notice of Disbarment, Suspension, Censure or Disqualification
10.81	Petition for Reinstatement



CIRCULAR 230

Continued

10.82 Expedited Suspension

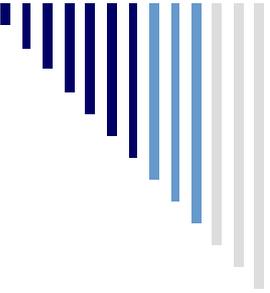
10.90 Records

10.91 Saving Clause

10.92 Special Orders

10.93 Effective Date

July 26, 2002

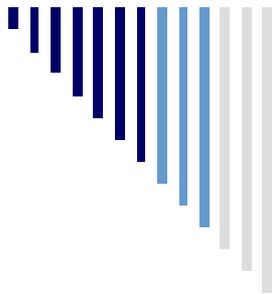


AICPA: TAX COMMITTEE

STATEMENTS ON STANDARDS FOR TAX SERVICES (SSTS)

- 10 Statements were issued between 1964 and 1977.**
- The first 2 Statements were withdrawn in 1982.**
- The remaining 8 Statements were revised in 1988 and in 2000.***

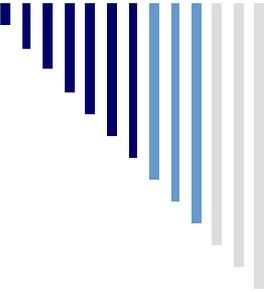
*** Effective October 31, 2000, the Statements are enforceable standards for AICPA members.**



AICPA

Letter to AICPA members by David A. Lifson, Chair, AICPA Tax Executive Committee, and Gerald W. Padwe, Vice-President, AICPA Taxation Section (April 18, 2000).

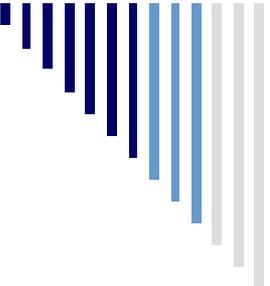
“In our view, practice standards are the hallmark of calling one’s self a professional. Members should fulfill their responsibilities as professionals by instructing and maintaining standards against which their professional performance can be measured. The promulgation of practice standards also reinforces one of the core values of the AICPA Vision – that CPAs conduct themselves with **honesty** and **integrity**.”



STATEMENT 1

Tax Return Positions

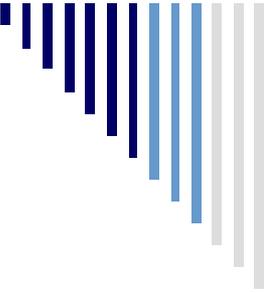
- CPAs should not recommend that a position be taken on a return unless they believe that, if the position is challenged, it is likely to be **sustained**. This is known as the **realistic possibility standard**.
- CPAs should not prepare a return or sign as preparer of a return if they know the return takes a position that could not be recommended because it does not meet the **realistic possibility standard**.



STATEMENT 1

Side Bar

- A CPA may recommend any return position that is **not** frivolous, so long as the position is adequately disclosed on the return.



STATEMENT 1

Side Bar

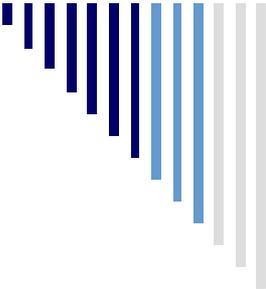
TO meet the realistic possibility standard, a member should have a good-faith belief that the position is warranted by existing law or can be supported by a good-faith argument for an extension, modification, or reversal of the existing law through administrative or judicial process. A member should not take into account the likelihood of audit or detection when determining whether this standard has been met.



STATEMENT 1

Side Bar

- The realistic possibility standard is less stringent than the substantial authority standard and the more likely than not standard that apply under the Code to substantial understatements of liability by taxpayers.
- The realistic possibility standard is stricter than the reasonable basis standard that is in the Code.



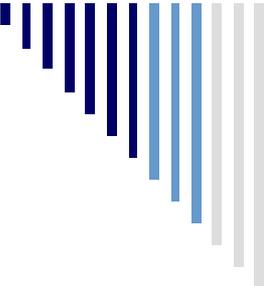
Realistic Possibility

Standard

Reasonable
Basis

**Realistic
Possibility**

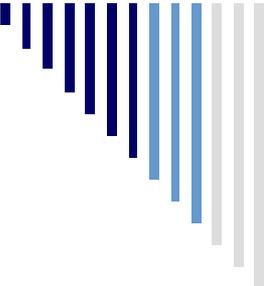
Substantial
Authority



STATEMENT 2

Answers to Questions on Returns

- **A CPA should make a reasonable effort to obtain information from the client and provide appropriate answers to all questions on a tax return before signing as preparer.**
- **Where reasonable grounds exist for omission of an answer, no explanation for the omission is required, and the CPA may sign the return unless the omission would cause the return to be considered incomplete.**



STATEMENT 3

Procedural Aspects of Preparing Returns

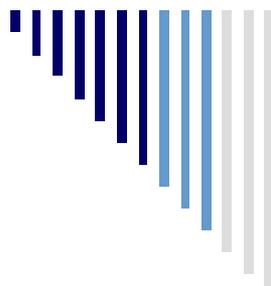
- A CPA may in good faith rely upon, without verification, information furnished by the client or third parties. Reasonable inquiries should be made if the information furnished appears to be incorrect, incomplete, or inconsistent.
- The CPA should use previous years' returns whenever possible to avoid omissions.



STATEMENT 4

Use of Estimates

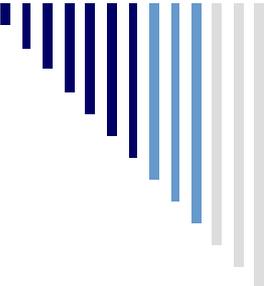
- A CPA may prepare returns using estimates provided by the taxpayer if it is impracticable to obtain exact data and the estimates are reasonable, given the facts and circumstances.



STATEMENT 5

Departure from a Previous Position

- If a CPA follows the standards in SSTS No. 1, the result of an administrative proceeding or court decision with respect to a prior return of the taxpayer does not bind the CPA as to how the item should be treated in a subsequent year's return.



STATEMENT 6

Knowledge of Error: Return Preparation

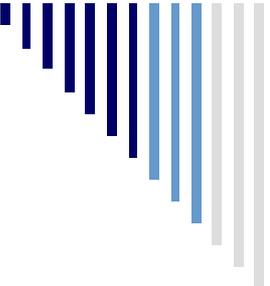
- **A CPA who becomes aware of an error in a previous year's return – or of the client's failure to file a required return – should promptly **INFORM** the client and recommend measures to correct the error. The CPA may not inform the IRS of the error except when required to do so by law.**
- **If the client does not correct the error, the CPA should consider whether to continue the professional relationship and must take reasonable steps to ensure that the error is not repeated if the relationship is continued.**



STATEMENT 7

Knowledge of Error: Administrative Proceeding

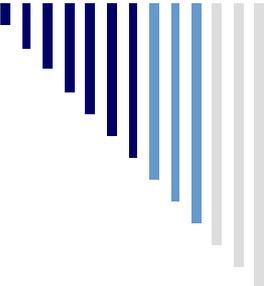
- **When a CPA becomes aware of an error in a return that is the subject of an administrative proceeding, the CPA should promptly inform the client of the error and recommend measures to be taken.**
- **The CPA should request the client's consent to disclose the error to the IRS but should not disclose the error without consent unless required to do so by law.**



STATEMENT 7

Side Bar

- If the client refuses disclosure, the CPA should consider whether to withdraw from representing the client in the administrative proceeding and whether to continue a professional relationship with the client.



STATEMENT 8

Form and Content of Advice to Clients

- **A CPA should use judgment to ensure that advice given to a client reflects professional competence and appropriately serves the client's needs.**
- **For all advice given to a client, the CPA should adhere to the standards of SSTS No. 1, pertaining to tax return positions.**
- **A CPA may choose to notify a client when subsequent developments affect advice previously given on significant tax matters but is under no strict obligation to do so.**

THE TAX CODE



- 6694(a)
Negligent or Intentional disregard of tax rules and regulations.
\$250 fine per return/claim

- 6694(b)
Willful attempt to understate the liability for tax
\$1,000 fine per return

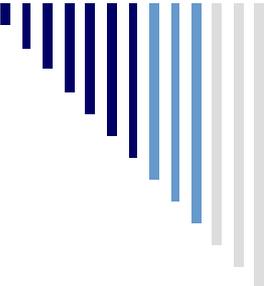
THE TAX CODE



- 6695(b)
Failure to Sign a tax return
\$50 fine per return

- 6695(a)
Furnish copy of return
\$50 fine per return

- 6695(d)
Keep copy of tax return or a
list of taxpayers for 3 years
\$50 per return



CONFIDENTIALITY “PRIVILEGE”

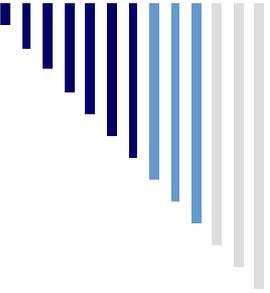


- **The IRS Restructuring and Reform Act of 1998 created a “limited” accountant-tax client privilege but only in non-criminal proceedings.
26 U.S.C. 7525**

THE PRIVILEGE IS “LIMITED”

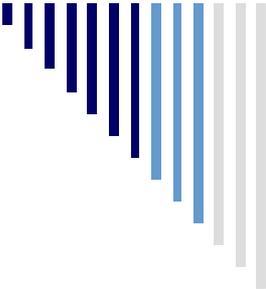


- **The “limited” accountant-tax client privilege applies to communications made to federally authorized tax practitioners such as lawyers, CPAs and Enrolled Agents.
26 U.S.C. 7525(a)**



THE PRIVILEGE: Limitations

- The privilege applies only to communications involving “**tax advice**” defined as advice given by an individual regarding a matter that is within that individual’s authority to practice as a federally authorized tax practitioner under **Treasury Circular 230**.



ETHICS

OUR JOINT RESPONSIBILITY

Thank you for participating in today's review of the important ethical issues and rules facing us as tax professionals.

